Supreme Court, U.S.
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No. 87-1182

In the

Supreme Court of the United States

October Term, 1987

WALTER A. RASCHICK,

Petitioner,

v.

PRUDENT SUPPLY, INC. and
RED LINE MEDICAL SUPPLY, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF PRUDENT SUPPLY, INC. AND RED LINE MEDICAL SUPPLY, INC. IN OPPOSITION

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QUESTION PRESENTED

Where the plaintiff failed to produce evidence raising an inference of age discrimination, did the court of appeals properly affirm the district court's order granting summary judgment in favor of the defendants?

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FEDERAL STATUTES:

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29 U.S.C. § 623(a)(1) 1

OPINIONS BELOW

Neither the opinion of the court of appeals nor the opinion of the district court is reported. The opinion of the district court is reprinted in the Appendix to the Petition for Writ of Certiorari at pages 45–60. The opinion of the court of appeals is reprinted in the Appendix to the Petition for Writ of Certiorari at pages 32–44.

JURISDICTION

The judgment of the court of appeals was filed on October 15, 1987. The jurisdiction of this Court is evoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This is an action under the Age Discrimination in Employment Act (ADEA) 29 U.S.C. § 621 *et. seq.* (1982). The plaintiff claims that he was terminated in violation of 29 U.S.C. § 623(a)(1). which makes it unlawful for an employer to discharge an employee because of that employee's age.

STATEMENT OF THE CASE

The essential and undisputed facts in this case are completely set forth in the opinion of the district court (see Petitioner's Appendix at pp. 45–60) and the opinion of the court of appeals (see Petitioner's Appendix at pp. 32–44). A brief summary of these facts is as follows:

Walter A. Raschick ("Raschick") was hired by Red Line Medical Supply, Inc. ("Red Line")[1] to be the full-time manager of a telemarketing department in July 1983. In October 1983, Raschick's employment with Red Line was terminated. At the time he was hired and at the time of his termination, Raschick was 55 years of age.

Before Raschick was hired by Red Line, Red Line had engaged in telemarketing on a limited basis and without a full-time manager. In July 1983, Red Line decided to create a telemarketing department and experiment with a greater commitment to telemarketing. Raschick, who had considerable experience in telemarketing, was hired by Red Line as the full-time manager of this new department. Raschick in turn hired several telemarketing operators to work under his supervision.

By September 1983, Raschick was frustrated with the amount of work which Red Line had made available to him and his telemarketing operators. On September 14, 1983 Raschick submitted a letter of resignation stating that it was in Red Line's "best interests" that he resign. After receiving Raschick's letter, Red Line's management reviewed the sales figures from the telemarketing department and found them disappointing. Red Line therefore accepted the letter of resignation, or as Raschick contends, terminated him.[2]

At the same time that Raschick's employment was terminated, the number of telemarketing operators was also reduced. Red Line went back to performing telemarketing on a limited scale and supervision of the remaining operators was assigned to an existing manager. Red Line did not seek to replace Raschick with a full-time telemarketing manager.

Red Line ultimately hired a full-time telemarketing manager, but not until July 1985, some 22 months after Raschick's termination.

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[1]Red Line Medical Supply, Inc., XVIIIB Medi-Mart, Inc., and Eagle Marketing, Inc. are subsidiaries of Prudent Supply, Inc.

[2]For the purposes of its summary judgment motion, Red Line assumed that Raschick had been terminated.

REASONS FOR DENYING THE WRIT

This case does not involve an interpretation of federal law which is new or in conflict with a decision from any other court. The law applied by the court of appeals and the district court is well-established and uncontroversial. Both the court of appeals and the district court applied the principles set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), which are applicable in age discrimination cases, *see e.g. Halsell v. Kimberly-Clark Corp.*, 683 F.2d 285, 289–290 (8th Cir. 1982) *cert. denied*, 459 U.S. 1205 (1983) and determined that Raschick had not produced sufficient evidence to establish a prima facie case of age discrimination. In reaching this conclusion, the court of appeals and the district court applied the appropriate standards under Rule 56 of the Federal Rules of Civil Procedure and were specifically guided by *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Thus, the fundamental question for review is whether the court of appeals and the district court properly applied settled law to the particular facts of this case. To resolve this question, the Court would be required to examine the record in detail and review all the evidence. Under these circumstances, review by certiorari is inappropriate. As the Court stated in *United States v. Johnston*, 268 U.S. 220, 227 (1925): "We do not grant a certiorari to review evidence and discuss specific facts."

Certiorari is also not appropriate because the particular facts of this case are unusual. This is not a case where a long-term employee was replaced by a younger employee or was terminated as part of a reduction in force. In this case, Raschick was 55 years old when he was hired. He was employed for just three months. He submittted a letter of resignation during his period of employment and after his termination, no one was hired to take his place. Although this case is important to Raschick and Red Line, a review of the facts by this Court would be of extremely limited value to other employees and employers.

Finally, certiorari should not be granted because the district court and the court of appeals reached a correct and fair result. By affidavits and deposition testimony which were uncontradicted and undisputed, Red Line demonstrated that Raschick had failed to satisfy the fourth element of a *McDonnell Douglas* prima facie case of discrimination. Red Line demonstrated that it did not seek to replace Raschick after his termination and did not have a continuing need for the services and skills provided by Raschick. *See, McDonnell Douglas Corp. v. Green,* 411 U.S. at 802; *Halsell v. Kimberly-Clark Corp.,* 683 F.2d at 290.

Red Line showed that the decision to hire Raschick as a full-time telemarketing manager and to employ a number of telemarketing operators under his supervision was a departure from Red Line's previous efforts in telemarketing. It was an experiment, and in October 1983, when Raschick's employment was terminated, the experiment was terminated. Red Line continued to perform telemarketing, but in much the same manner as it did prior to Raschick's employment. Red Line employed a small number of telemarketing operators and did not utilize the services of a full-time telemarketing manager. An existing manager supervised the remaining telemarketing operators as part of that manager's responsibilities for a number of different areas. Accordingly, both the district court and the court of appeals properly concluded that Red Line did not have a continued need for a full-time telemarketing manager subsequent to Raschick's termination.

The district court and the court of appeals analyzed Raschick's claim against the *McDonnell Douglas* four-factor test for establishing a prima facie case of employment discrimination. The court of appeals and the district court also could have concluded that summary judgment was appropriate because Raschick failed to come forward with any evidence to rebut the articulated and legitimate reason for Raschick's termination. *See Matson v. Cargill, Inc.,* 618 F. Supp. 278, 283 (Minn. 1985). Red Line accepted Raschick's letter of resigna-

tion, or terminated him, because the sales volume produced by Raschick's department was disappointing. Raschick presented no evidence to the district court or the court of appeals indicating that this articulated reason was a pretext and that the real reason for his termination was his age.

Indeed, the facts in this case simply do not support any inference of age discrimination. Raschick was 55 years old when he was hired, and he was 55 years old at the time of his termination. The three people who were involved in the decision to hire him (Goldenberg, Kolmer and Crews) were also the people involved in the decision to terminate him. The decision to terminate Raschick was not based on any far-fetched or concocted reasons. The decision was based on the very reasons set forth in Raschick's letter of resignation. In that letter, Raschick stated that there was not enough work to justify his presence. After receiving this letter, Goldenberg, Kolmer and Crews analyzed the sales figures and agreed with Raschick's assessment. Moreover, there is no direct evidence of discrimination. Raschick admitted in his deposition that no one ever said anything to him to indicate that he was being let go because of his age. Finally, the EEOC, which has considerable expertise in analyzing and investigating claims of discrimination, investigated Raschick's charge of age discrimination and concluded: "EEOC was unable to substantiate the alleged discrimination."

Given these undisputed facts, there is insufficient evidence for reasonable jurors to return a verdict in favor of Raschick. The district court and the court of appeals did not err.

CONCLUSION

For all the foregoing reasons, Prudent Supply, Inc. and Red Line Medical Supply, Inc. request that Raschick's Petition for a Writ of Certiorari be denied.

Dated this 12th day of February 1988.

Respectfully submitted,

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